Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

T. M. VISWANATHAN --- PETITIONER

VS.

BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA et al. --- RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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APPENDIX

APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 96-1443

T.M. VISWANATHAN,

Plaintiff-Appellant,

versus

BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA; C.D. SPANGLER, JR., in his official capacity, FAYETTEVILLE STATE UNIVERSITY BOARD OF TRUSTEES; JESSE WILLIAMS, DR., in his official and individual capacity; LLOYD V. HACKLEY, DR., in his official and individual capacity; LEO EDWARDS, DR., in his official and individual capacity, JON YOUNG, DR., in his official and individual capacity, MORRIS BLOUNT, DR., in his official and individual capacity, JOSEPH MONROE, DR., in his official and individual capacity,

CLARENCE WHITE, DR., in his official and individual capacity, KAYE WEBB, in her official and individual capacity, and FELTON THOMAS, DR., in his individual and official capacity; ALL DEFENDANTS,

Defendants-Appellees.

Appeal from the United States District Court for the Middle District of North Carolina at Durham. Hiram H.Ward, Senior District Judge. (CA-94-528-1)

Submitted: August 22, 1996 Decided: September 3, 1996

Before HALL, WILLIAMS, and MICHAEL, Circuit Judges

Affirmed by unpublished per curiam opinion

T.M. Viswanathan, Appellant Pro Se. Thomas J. Ziko, Celia Grasty Jones, OFFICE OF THE ATTORNEY GENERAL OF NORTH CAROLINA, Raleigh, North Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

See Local Rule 36(c).

PER CURIAM:

Appellant appeals from the district court's orders granting Defendants' motion to dismiss and denying Appellant's motion for reconsideration. We have reviewed the record and the district court's opinions and find no reversible error. Accordingly, we affirm on the reasoning of the district court. Viswanathan v. Board of Governors, No. CA-94-528-1 (M.D.N.C. March 1 Section April 24, 1996). In light of the disposition of the appeal, we deny Appellant's motion to vacate order. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

Case No. 1:94CV528

Docket Entry: 48
Filed March 1, 1996

Dr. TENKASI M. VISWANATHAN,)
Plaintiff,)
v.)
)
THE UNIVERSITY OF NORTH CAROLINA)
BOARD OF GOVERNORS, C.D. SPANGLER, JR)
in his official capacity, THE FAYETTEVILLE)
STATE UNIVERSITY BOARD OF TRUSTEES,)
Dr. JESSE WILLIAMS in his official and individual)
capacity, Dr. LLOYD V. HACKLEY in his official)
and individual capacity, Dr. LEO EDWARDS in)
His official and individual capacity, Dr. JON)
YOUNG in his official and individual capacity,)
Dr. MORRIS BLOUNT, in his official and)
individual capacity, Dr. JOSEPH MONROE in his)
official and individual capacity Dr. CLARENCE)
WHITE, in his official and individual capacity,)
KAYE WEBB, in her official and individual capacity,)
and Dr. FELTON THOMAS in his)
individual and official capacity,)
)
Defendants.)

JUDGMENT

For the reasons set forth in the memorandum opinion entered contemporaneously herewith,

IT IS ORDERED AND ADJUDGED that defendants' Motion to Dismiss be, and the same hereby is **GRANTED** and this action be dismissed.

(Sd.) Hiram H. Ward
United States District Judge

March 1, 1996

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

Case No. 1:94CV528

Docket Entry: 47
Filed March 1, 1996

Dr. TENKASI M. VISWANATHAN,)
Plaintiff,)
v.)

THE UNIVERSITY OF NORTH CAROLINA)
BOARD OF GOVERNORS, C.D. SPANGLER, JR)
in his official capacity, THE FAYETTEVILLE)
STATE UNIVERSITY BOARD OF TRUSTEES,)
Dr. JESSE WILLIAMS in his official and individual)
capacity, Dr. LLOYD V. HACKLEY in his official)
and individual capacity, Dr. LEO EDWARDS in)
His official and individual capacity, Dr. JON)
YOUNG in his official and individual capacity,)
Dr. MORRIS BLOUNT, in his official and)
individual capacity, Dr. JOSEPH MONROE in his)
official and individual capacity Dr. CLARENCE)
WHITE, in his official and individual capacity,)
KAYE WEBB, in her official and individual capacity,)
and Dr. FELTON THOMAS in his)
individual and official capacity,)
)
Defendants.)

MEMORANDUM OPINION AND ORDER

Ward, Senior Judge

This matter comes before the Court on defendants' Motion to Dismiss pursuant to Rule 12(b)6. For the reason stated herein, the Motion to Dismiss will be granted with respect to all claims and this entire action will be dismissed.

FACTS

For the purposes of this action, facts alleged by plaintiff will be taken as being true. Republican Party of North Carolina v. Martin, 980 F.2d 943 (4th Cir. 1992), cert denied, 114 S.Ct.93

(1993). Plaintiff is representing himself pro se and many of the facts alleged by plaintiff are convoluted and tangled. This court has spent a great deal of time and effort attempting to organize the facts in some type of coherent manner.

PARTIES

Plaintiff names a great many individuals as defendants and it will probably be helpful if a little time is spent sorting out the individual defendants and the positions they held during the time period addressed by plaintiff.

C.D. Spangler, Jr. was the President and executive officer for the University of North Carolina.

Dr. Jesse Williams was a member of the Fayetteville State University (hereinafter "FSU") Board of Trustees.

Dr. Lloyd Hackley was the Chancellor of FSU and the executive officer for the FSU Board of Trustees.

Dr. Leo Edwards was the Director of the Mathematics and Science Education Center at FSU from 1989 until 1991. Dr. Edwards was the Dean of the College of Arts and Sciences at FSU fro 1990 until 1991 and Dr. Edwards was the Vice Chancellor for Academic Affairs at FSU from 1991 until 1993.

Dr. Jon Young was the Chairman of the Department of Humanities for the College of Arts and Sciences from 1990 until 1991. Dr. Young was then the Dean of the College of Arts and Sciences from 1991 until 1993.

Dr Morris Blount was the Chairman for the Department of Mathematics and Computer Science.

Dr. Joseph Monroe was the Vice Chancellor for Academic Affairs at FSU from 1989 until 1991.

Dr. Clarence White was the Chairman of the FSU Hearing and Reconsideration Committee for 1991 until 1993.

Kaye Webb was legal counsel for Chancellor Hackley and FSU from 1989 until 1990 and from 1992 until 1993.

Dr. Felton Thomas was the Chairman of the FSU Hearing and Reconsideration Committee from 1989 until 1990.

With the sole exception of Spangler, plaintiff has named all of the above defendants in both their individual and official capacity.

FACTS

Plaintiff was appointed to a one-year position as an Associate Professor in the Department of Mathematics and Computer Science at FSU for the 1989-90 academic year. In the fall of 1989, plaintiff made statements at several faculty meetings which were highly critical of the academic administration at FSU. In October of 1989, the tenured faculty of the Department of Mathematics and Computer Science recommended that plaintiff be reappointed and the Department Chair for the Department of Mathematics and Computer Science recommended that plaintiff be reappointed. This

recommendation was approved by the Dean of the School of Arts and Sciences and forwarded to Vice Chancellor Joseph Monroe.

The FSU Committee on Tenure, Promotion and Reappointment recommended plaintiff's reappointment and also made factual findings. The Tenure Committee found that on December 4, 1989, plaintiff publicly criticized Mr. Monroe for failing to emphasize publication and research. Three days later, plaintiff was called into a conference with defendant Edwards and Blount and told that he needed to "adapt" to the situation at FSU. On January 29, 1990, defendant Monroe recommended that plaintiff not be reappointed due to plaintiff's "unhappiness" and his "serious problems of adjustment."

On February 8, 1989, plaintiff was given notice by letter that he would not be reappointed for second one-year term. Plaintiff appealed this decision to the FSU Hearing and Reconsideration Committee where it was recommended that plaintiff be reappointed for a second one-year term. Defendant Hackley declined to accept this recommendation.

Plaintiff then appealed to the FSU's Board of Trustees where defendant Hackley's decision was upheld. Next, plaintiff appealed to the Board of Governors of the University of North Carolina. The Board of Governors made findings of fact and recommended that plaintiff be allowed to request reappointment.

On September 28, 1991, plaintiff requested reappointment. Plaintiff heard nothing regarding his request so he appealed to the Board of Governors of UNC on February 15, 1992. The Board of Governors set a date of May 8, 1992 for a review of plaintiff's request for reappointment.

On March 20, 1992, plaintiff received a departmental recommendation for reappointment. However, on May 6, 1992, defendant Hackley decided not to reappoint plaintiff. Following this decision, plaintiff again appealed to the Hearing and Reconsideration Committee and was again recommended for reappointment. Defendant Hackley again rejected this recommendation.

Following this rejection, plaintiff appealed to the board of Governors for UNC where defendant Hackley's decision to not reappoint plaintiff was finally upheld.

Following this long and convoluted series of events, plaintiff filed this action alleging that a series of defendants violated several federal and state laws.

DISCUSSION

Defendant has moved to dismiss this action pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. A Rule 12(b)(6) motion should only be granted in very limited circumstances. Rogers v. Jefferson-Pilot Life Ins. Co., 883 F.2d 324, 325 (4th Cir. 1989). The Fourth Circuit has stated that "a motion to dismiss for failure to state a claim for relief should not be granted unless it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of his claim." Id.

Based on Rogers, the question becomes whether the Complaint, taken in the light most favorable to plaintiff, states any valid claim for relief. In deciding whether a claim has

been stated, Rule 8 of the Federal Rules of Civil Procedure requires only "notice pleading" such that a defendant receives fair notice from the complaint of the claim and the grounds on which the claim rests. Conley v. Gibson, 355 U.S. 41 (1957).

Plaintiff's essential claim is that his one-year contract with FSU was not continued for a second year and this refusal by FSU to a second year contract violated plaintiff's constitutional rights. Plaintiff's claims will be addressed separately.

A. Plaintiff's 42 U.S.C. Section 1985 Claim

In order to state a claim under 42 U.S.C. Section 1985, plaintiff must allege: 1) a conspiracy by the defendants, 2) to deprive plaintiff of equal protection of the laws, that was 3) purposeful, with the intention to discriminate, and that 4) resulted in injury to person or property or deprivation of a right or privilege of citizenship. Griffin v. Breckenridge, 403 U.S. 88 (1971). For plaintiff to successfully allege a conspiracy, he must do more than merely state conclusory allegations. Id. at 102. Plaintiff must make specific factual averments showing

the direct participation of each defendant in the alleged conspiracy; who conspired; and how, when and where they conspired. Thompson v. Wise General Hospital, 707 F.Supp 849 (W.D. Va. 19890 aff'd, 896 F.2d 546, cert denied, 498 US 846 (1990).

A thorough reading of plaintiff's complaint finds no allegation of conspiracy. Plaintiff does not allege any specific acts of conspiracy. Instead, plaintiff seems to rely on innuendo when he insinuates that certain events occurred within a short time of each other. Relying on innuendo and insinuation is not sufficient to state a claim under 42 U.S.C Section 1985. Accordingly, plaintiff's claim for violation of 42 U.S.C. Section 1985 is dismissed with respect to all defendants.

B. Plaintiff's 42 U.S.C. Section 1986 Claim

Plaintiff claims that defendants violated 42 U.S.C. Section 1986 when they failed to prevent violations of 42 U.S.C. Section 1985. A claim under 42 U.S.C. Section 1986 can only be stated if the complaint states a valid claim under 42 U.S.C. Section 1985. McCalden v. California Library

Ass'n, 955 F.2d 1214 (9th Cir. 1990). As discussed above, plaintiff failed to state a claim for violation of 42 U.S.C. Section 1985. Therefore, plaintiff's Section 1986 claim must be dismissed. Accordingly, Defendants' Motion to Dismiss the claim for violation of 42 U.S.C. Section 1986 will be granted and these claims will be dismissed.

C. Plaintiff's 42 U.S.C. Section 1983 Claim - Property Right and Liberty Interest

Plaintiff claims that defendants' actions violated 42 U.S.C. Section 1983 in that plaintiff's constitutional rights were allegedly violated by defendants when plaintiff did not receive a second one- year contract. In order to have his constitutional rights violated, defendant must first be deprived of a constitutionally protected right. Thus, in order to invoke the Fourteenth Amendment's due process protection, plaintiff must allege that defendants deprived him of either a protected liberty or property right. Board of Regents v. Roth, 408 U.S. 564 (1972).

Plaintiff clearly acknowledges that he only had a one-year contract with FSU. It is well settled law that faculty members with single-year contracts do not have property rights in continued employment. Kilcoyne v. Morgan, 664 F.2d 940 (4th Cir. 1981), cert. denied 456 U.S. 928 (1982). Therefore, plaintiff did not have a property right in having his one-year contract renewed for a second year.

Since plaintiff did not have a property right in his continued employment, he must rely on a deprivation of a liberty interest to support his claim for violation of his due process. A liberty interest may be implicated in a termination of employment if the termination seriously affects the employee's standing and associations in his community or imposes a stigma or other disability that forecloses his freedom to take advantage of other employment opportunities. Roth at 573. However, a decision to not reappoint does not implicate any liberty interest. Id. at 573.

Plaintiff might attempt to argue that his failure to be reappointed for a second year creates a stigma to his reputation

and that this stigma is sufficient to adversely affect his liberty interest in future employment. However, plaintiff fails to claim that he has been stigmatized or that he has been unable to obtain other employment. On the contrary, plaintiff states since his one-year contract expired with FSU, he has been employed as a teacher in the North Carolina state school system.

Plaintiff's sole claim to stigmatization is a claim that his reputation was "put in jeopardy" when he was not rehired for a second one-year period. However, reputation alone is insufficient to invoke the protection of the Due Process Clause and as such is not a protected liberty interest. Paul v. Davis, 424 U.S. 693 (1976) reh'g denied, 425 US 985 (1976). This does not leave plaintiff without recourse since damages to plaintiff's reputation are actionable under the common law claims for libel and slander. Siegert v. Gillery, 500 U.S. 226 (1991) reh'g denied, 501 US 1265 (1991).

Plaintiff did not have a property right in continued employment, nor was he denied any liberty interest; therefore,

his claims for violation of due process due to deprivation of a property or liberty interest in accord with 42 U.S.C. Section 1983 must be and will be dismissed.

D. Plaintiff's 42 U.S.C. Section 1983 Claim - First Amendment Free Speech Right

Plaintiff also claims that he was not rehired for a second year out of retaliation for making remarks critical of the FSU administration. In order to properly state a claim for retaliatory discharge under 42 U.S.C. Section 1983, plaintiff must satisfy a three-pronged test. Holland v. Rimmer, 25 F.3d 1251 (4th Cir. 1994). Plaintiff must show: 1) that "he engaged in speech on a matter of public concern", 2) "that the alleged retaliatory action deprived him of some valuable benefit" and 3) "a causal relationship between the protected speech and the retaliatory action, such that 'but for' the protected expression the employer would not have taken the alleged retaliatory action." Holland at 1254.

Plaintiff's comments regarding the FSU administration must be deemed to be of public concern in order for the second and third elements of retaliatory discharge to be addressed.

Plaintiff cannot satisfy the "public concern" requirement by simply alleging that his comments concerned disagreements between himself and FSU administrators because it has been established that complaints of personal grievances concerning an employee's employment are not matter of public concern and are not entitled to constitutional protection. Connick v. Myers, 461 U.S. 138 (1983).

Plaintiff asserts that he "made statements at several meetings of the faculty which were quite critical of the academic administration at FSU." Plaintiff does not specify the exact nature of these comments but from a reading of the complaint and the documents submitted by plaintiff it appears that he was concerned with FSU's requirements for the FSU faculty to publish. While this concern is undoubtedly of interest to the professors at FSU, it hardly seems to rise to the standard of public concern necessary to satisfy threshold requirements for First Amendment protection.

Plaintiff also asserts that he published an article in the Fayetteville Observer-Times on March 18, 1992 which dealt

with education issues of public concern. Although this article was published more that two years after plaintiff was notified that he would not be rehired for a second year, plaintiff somehow attempts to argue that he was not rehired as a result of this article. Barring some unknown powers of prognostication, it seems highly unlikely that an article published two years after the fact could have any effect on the decision not to rehire plaintiff for a second year.

Plaintiff has failed to satisfy the first element in his claim for retaliation in violation of the First Amendment. Plaintiff makes no assertions that could be interpreted as showing that he made any statements of public concern during the time period he was being considered for a second one-year contract. Since plaintiff has failed to allege that his comments were of public concern, he has failed to allege a violation of 42 U.S.C. Section 1983. Accordingly, defendants' Motion to Dismiss all 42 U.S.C. Section 1983 claims will be granted.

E. Plaintiff's 42 U.S.C. Section 1981 Claim

Plaintiff also claims that FSU's decision to not renew his contract violated 42 U.S.C. Section 1981. Plaintiff's contract was for employment with a state agency and all named parties are state employees. State actors are not subject to liability under 42 U.S.C. Section 1981 since 42 U.S.C. Section 1983 was intended to be the exclusive federal remedy for violation of rights guaranteed under 42 U.S.C. Section 1981. Jett. v. Dallas Independent School District, 491 U.S. 701 (1989). Thus, plaintiff's claims against all defendants for violation of 42 U.S.C. Section 1981 must be dismissed.

F. Plaintiff's Class Action Claim

Plaintiff claims that he is part of a "class" of employees created by defendants which has been discriminated against. Plaintiff contends that this "class" consists of employees who were

reviewed for contract renewal during a time when they were no longer employees of FSU. This claim is extremely vague; however, there are several possibilities to explain plaintiff's claim. Plaintiff might be attempting to file a class action claim

or he might be attempting to allege an equal protection violation.

If plaintiff is attempting to state a class action claim, he has not demonstrated sufficient facts for a class to be certified under Fed.R.Civ.P. 23. Thus, any claim for certification of a class action must be denied and all claims for the creation of a "class" must be dismissed.

The other possibility is that plaintiff was attempting to argue that he was denied equal protection when he was considered for contract renewal during a period of time when he was not actually an employee of FSU. However, plaintiff fails to allege that he was treated differently in any way from other employees of FSU who were considered for contract renewal while they were FSU employees. Simply because plaintiff was in a category unlike most employees considered for contract renewal is not enough to create a valid claim. Plaintiff has not argued that any employee in his supposed class was treated any differently than an employee outside this class. Thus, plaintiff has failed to state a claim for violation of

his equal protection rights. Accordingly, any claim for violation of equal protection must be dismissed.

G. Plaintiff's Request for Review under N.C.G.S. Section 150B-45

Plaintiff has requested judicial review of a final decision rendered by the Board of Governors of the University of North Carolina pursuant to N.C.G.S. Section 150B-45. However, N.C.G.S. Section 150B-45 only gives the power of judicial review to either the Superior Court of Wake County or the Superior Court of the county where plaintiff resides. There is no statutory authority for any other court to review a final decision under North Carolina's Administrative Procedure Act.

Since North Carolina has chosen to confer judicial review to specific courts, and plaintiff has not presented any evidence to indicate that he would not receive a fair hearing in the proper court, this court has no jurisdiction to review the decision made by the Board of Governors for the University of North Carolina. Plaintiff has an adequate avenue of review in

the state court system in accord with N.C.G.S. Section 150B-145 and it would be redundant and wasteful for this Court to disrupt the state court proceedings. Accordingly, this Court declines to review the plaintiff's administrative claims.

H. Amended Claim for Violation of Title VII

Plaintiff amended his complaint to allege a violation of 42 U.S.C. Section 2000e-5(c). Defendants argue that this claim is barred by the statute of limitations and should be dismissed.

Title VII requires that aggrieved persons file a complaint with the EEOC "within one hundred and eighty days after the alleged unlawful employment practice occurred." 42 U.S.C. Section 2000E-5(e).

Any charge filed after this 180-day period is time-barred. Hamilton v. First Source Bank, 928 F.2d 86 (4th Cir. 1990) (en banc). In the present action, plaintiff filed his EEOC charge against FSU on March 29, 1994. In his EEOC complaint, plaintiff alleged that on August 2, 1993, he was formally notified that he would not be granted an Associate

Professorship and that his services were no longer needed at FSU. Assuming this date to be accurate, plaintiff was required to file his EEOC charge no later than February 2, 1994. Plaintiff clearly failed to file his EEOC charge within the statutorily proscribed time.

Using the August 2, 1993 date to compute the date for the running of the 180-day period is putting a liberal interpretation on the facts. Plaintiff was initially informed that he was not to have his contract renewed on February 8, 1990. For the purposes of a Title VII action, the alleged discrimination occurs at the time the nonrenewal decision is communicated to the plaintiff. Delaware State College v. Ricks, 449 U.S. 250 (1980).

Plaintiff is also prohibited from arguing that the grievance proceedings tolled the running of the 180-day period. The Court in Delaware stated that a grievance procedure or other method of collateral review does not toll the running of the Title VII filing period since the grievance procedure is a remedy for a prior decision and not an

opportunity to influence that decision prior to its making. Delaware at 261. Thus, a reasonable interpretation of the facts indicates that plaintiff should have filed his EEOC charge within 180-days of February 8, 1990. Plaintiff clearly failed to file his EEOC charge within 180-days of the alleged unlawful employment action. Since plaintiff failed to file his EEOC charge within 180-days of either the February 8, 1990 action or the August 2, 1993 action, his Title VII claims are barred. Accordingly, defendants' Motion to Dismiss plaintiff's Title VII claim is granted.

IT IS, THEREFORE, ORDERED that defendants' Motion to Dismiss all claims be, and the same hereby is, **GRANTED** and that all claims be **DISMISSED.**

(SD.) Hiram H. Ward
United States District Judge

APPENDIX B

THE UNIVERSITY OF NORTH CAROLINA

General Administration

P.O. Box 2688

Chapel Hill 27515-2688

ELIZABETH BUNTING
Special Assistant to the President

TELEPHONE: (919)962-1000

Confidential

September 16, 1991

Dr. T. M. Viswanathan
Blues Farm Road 1332, Apt. 15
Laurinburg, NC 28352

Dear Dr. Viswanathan:

On Friday, September 13, 1991, the Board of Governors considered and decided your appeal from the decision of the Board of Trustees of Fayetteville State University. I have enclosed the report adopted by the Board. In summary, the Board found that the decision not to

reappoint you could have been based upon an impermissible reason under section 604 of the Code of the University.

Accordingly, the Board reversed the nonreappointment decision and remanded this case back to FSU. As directed by the Board, if you now wish to seek reappointment, you should make such a request to Chancellor Hackley. Such a review would thereafter be initiated at the departmental level.

This notice to you will complete the Board of Governors procedures and action with regard to this case. Please call me if you have questions about this letter or the Board's report.

Sincerely,

(Sd.) _____
Elizabeth C. Bunting

THE UNIVERSITY OF NORTH CAROLINA is composed of the sixteen public senior institutions in North Carolina

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APPENDIX B

REPORT OF THE COMMITTEE ON PERSONNEL AND TENURE IN THE MATTER OF THE APPEAL OF DR. T.M. VISWANATHAN FAYETTEVILLE STATE UNIVERSITY

ADOPTED BY THE BOARD ON September 13, 1991

Professor Viswanathan was appointed to a one-year tenure-track position as an Associate Professor in the Department of mathematics and Computer Science at Fayetteville State University for the 1989-90 academic year. By letter dated February 8, 1990, he was given timely notice that he would not be reappointed to a second one-year term. He then appealed this decision and was granted a hearing before the FSU Hearing and Reconsideration Committee. At hat hearing, he contended that the decision not to reappoint was based upon personal malice and also that the decision was an act of retaliation for the exercise of his First Amendment rights.

The Hearing and Reconsideration Committee held the requested hearing on May 8, 1990, and at its conclusion, recommended that the non-renewal decision be reversed; the Committee specifically recommended a "one-year renewal" of Professor Viswanathan's contract. Chancellor Hackley declined to accept this recommendation in a letter dated August 24, 1990, and an appeal was then lodged with the FSU Board of Trustees. After a hearing, that Board upheld the Chancellor's decision. Professor Viswanathan then appealed to the Board of Governors. The matter was referred to this Committee as required by Section 301D of the Code [of the University of North Carolina]. After some discussion, the parties agreed on the content of the record and submitted written arguments in support of their contentions. The matter was then referred to a subcommittee composed of Mr. Pat Taylor, Mr. Adams and Mr. Spaulding.

The subcommittee met on Thursday September 12, 1991, reviewed the record on appeal, considered the written statements of the parties and received their oral presentation.

Based upon that record and review, the Committee on Personnel and tenure has received and approved the following subcommittee findings and recommendations.

At the evidentiary hearing before the FSU Hearing and Reconsideration Committee, Professor Viswanathan submitted evidence which tends in summary to show the following chronology:

(1) In the early fall of 1989, Professor Viswanathan made statements at several meetings of the faculty which were quite critical of the academic administration at FSU.

(2) During December 1989, the tenured faculty of the Department of Mathematics and Computer Science recommended that Dr. Viswanathan be reappointed.

(3) On November 11, 1989, the Department Chair of Mathematics and Computer Science signed an evaluation which recommended Dr. Viswanathan for reappointment as an Associate Professor.

(4) This recommendation was approved by the Dean of the School of arts and Sciences and forwarded to the Office of Vice Chancellor Joseph Monroe.

(5) The FSU Committee on Tenure, Promotion, and Reappointment also recommended reappointment and sent these findings to Dr. Monroe.

(6) On December 4, 1989 at a faculty meeting with the Chancellor, Dr. Viswanathan publically criticized Dr. Monroe for failing to emphasize publication and research.

(7) On December 7, 1989, Dr. Viswanathan was called to a conference with the Dean, and the Department Chair, where he was told that he needed to "adapt" to the situation at FSU.

(8) On January, 1990, Dr. Monroe wrote a memorandum to Chancellor Hackley recommending that Professor Viswanathan not be reappointed. He indicated in this document that this was based on Professor Viswanathan's unhappiness with the teaching conditions at FSU. In a later letter, further explaining his reasons for the

non-reappointment recommendation, he stated that the professor had "serious problems of adjustment."

(9) Chancellor Hackley accepted this recommendation and so notified Professor Viswanathan in a letter dated February 8, 1990.

The evidence presented tends to show that the negative recommendation of the Vice Chancellor could have been based in part on Professor Viswanathan's critical remarks. Because the remarks appear to be protected speech, this possible motivation on the Vice Chancellor's part would violate the First Amendment to the U.S. Constitution. A decision tainted in this manner would be specifically proscribed under 604B of the Code [of the University of North Carolina].

An appropriate remedy in cases where a nonreappointment decision is based on an impermissible reason is to conduct a new review of the faculty member's credentials. Such a review should be removed from the prior taint, but should also allow the institution an opportunity to

consider the current credentials of the faculty member. To accomplish these ends, the Committee recommends that the nonreappointment decision be reversed and that Professor Viswanathan be given an opportunity to request reappointment as an Associate Professor. This request, if made, should follow the procedures proscribed [sic] by FSU Tenure Regulations and should be initiated at the department level.

(Sd.) _____
John A. Garwood, Chairman
September 13, 1991

APPENDIX B

THE UNIVERSITY OF NORTH CAROLINA

General Administration

ELIZABETH BUNTING
Special Assistant to the President

TELEPHONE: (919)962-1000

June 16, 1992

Dr. Tenkasi M. Viswanathan
Blues Farm Road 1332, Apt. 15
Laurinburg, NC 28352

Dear Dr. Viswanathan:

On Friday, June 12, 1992, the Board of Governors considered and decided your appeal. I enclose the report adopted by the Board.

This notice to you will complete the Board of Governors procedures and action with regard to this case.

Sincerely,

(Sd.)_____
Elizabeth C. Bunting

THE UNIVERSITY OF NORTH CAROLINA is composed of the sixteen public senior institutions in North Carolina

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APPENDIX B

REPORT OF THE COMMITTEE ON PERSONNEL AND TENURE IN THE MATTER OF THE APPEAL OF DR. T.M. VISWANATHAN FAYETTEVILLE STATE UNIVERSITY

ADOPTED ON June 12, 1992

This is the second appeal of Dr. Viswanathan concerning a non-reappointment decision for the 1990-91 academic year. In the first appeal, Dr. Viswanathan contended that the negative decision resulted from retaliation for his exercise of his right of free speech. After a thorough review of the record of this case, this Committee recommended and the Board adopted the following finding:

> The evidence presented tends to show that the negative recommendation of the Vice Chancellor could have been based in part on Professor Viswanathan's critical remarks. Because the remarks appear to be protected speech, this possible motivation on the Vice Chancellor's part would violate the First Amendment to the U.S. Constitution. A decision tainted in this manner would be specifically proscribed under 604B of the Code [of the University of North Carolina].

As a remedy the Board remanded the case to Fayetteville State University, ordered that Dr. Viswanathan be given an opportunity to request reappointment and specified the nature of this review:

> Such a review should be removed from the prior taint, but should also allow the institution an opportunity to consider the current credentials of the faculty member.

This decision was adopted on September 13, 1991, and shortly thereafter Dr. Viswanathan submitted his credentials to the institution. The new review took place during the 1991-92 academic year and recently culminated in a decision not to reappoint Dr. Viswanathan. This new appeal is grounded on the contention that the new review process did not comply with the Board's order of September 13, 1991. The matter was referred to a subcommittee composed of Mr. Spaulding, Mr. Adams and Dr. Danieley.

The subcommittee met on Wednesday, June 3, 1992, and reviewed the record on appeal and thoroughly considered the contentions raised by Dr. Viswanathan. The Committee on Personnel and Tenure has received and approved the following subcommittee findings and recommendation.

The Board's first decision in this case contemplated a fair and untainted reconsideration of Dr. Viswanathan's

request for reappointment. The evidence in the record supports the finding that this second review was consistent with the Board's order. The Committee therefore concludes and recommends that the decision not to reappoint Dr. Viswanathan be upheld.

(Sd.) _____
John A. Garwood, Chairman
6-12-92
Date

APPENDIX B

NORTH CAROLINA
NEW HANOVER COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

FILE NO. 92 CVS 2024

FILED FEBRUARY 24, 1993

TENKASI M. VISWANATHAN	:
Petitioner	:
	:
vs.	:
	:
UNIVERSITY OF	:
NORTH CAROLINA AND	:
FAYETTEVILLE STATE	:
UNIVERSITY,	:

Respondents :

_____ :

ORDER ON PETITION FOR JUDICIAL REVIEW

THIS CAUSE coming to be heard and being heard before the undersigned Judge of Superior Court on the 8th of February, 1993, the Petitioner being present and represented by Steven J. O'Connor of Rose, Ray, Winfrey & O'Connor, P.A. and the Respondent being represented by Thomas J. Ziko, Special Deputy Attorney General, North Carolina Department of Justice; and the Court having heard the arguments of the parties and having reviewed the record as submitted in the case; the Court finds as follows:

1. This is not a contested case in which an administrative law judge made a recommended decision and therefore the court is not required to make any initial determinations under N.C. Gen. Stat. Section 150B-51(a).

---

2. The substantial rights of the Petitioner have been prejudiced because the agency's final decision was made upon unlawful procedure under N.C. Gen. Stat. Section 150B-51(b)(3) in that Petitioner was denied the process and procedure set out in Section 5 of the Fayetteville State University Tenure Policies and Regulations, specifically being a conference with Jon M. Young, Acting Dean of the College of Arts and Sciences, and a hearing before the Fayetteville State University Hearing and Reconsideration Committee to determine whether the decision of John M. Young, Acting Dean of the College of Arts and Sciences, not to reappoint Petitioner to a second one-year appointment was based on impermissible reasons of Petitioner's exercise of rights guaranteed by the First Amendment of the United States Constitution and personal malice. Exception No.2 set out in the Petition for Judicial Review is sustained.

3. The Fayetteville State University Tenure Policies and Regulations did not require that Petitioner be notified of

non-reappointment at least 90 days before the end of the 1991-92 academic year (the academic year during which the reappointment review ordered by the University of North Carolina Board of Governors, by order dated September 13, 1991, took place) and failure to give any such notice was not unlawful procedure under N.C. Gen/. Stat. Section 150B-51(b)(3). Exception No. 3 set out in the Petition for Judicial Review is overruled.

4. Petitioner did not brief or argue Exception No. 1 set out in the Petition for Judicial review and the court hereby overrules such Exception No. 1.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED, that the agency's final decision in the above-captioned matter is reversed under N.C. Gen. Stat. Section 150B-51(b)(3) and it is ordered that the above-captioned case be remanded to Fayetteville State University, to give Petitioner an opportunity under Fayetteville State University's Tenure Policies and Regulations to have a conference with Jon M. Young, Acting Dean of the College

of Arts and Sciences, and the further opportunity to request a review of Jon M. Young's decision by the Fayetteville State University Hearing and Reconsideration Committee, and that further procedure thereafter follow the Fayetteville State University Tenure Policies and Regulations.

This the 19 th day of February, 1993.

(Sd.)
QUENTIN T. SUMNER
SUPERIOR COURT JUDGE PRESIDING

APPENDIX B

FSU FAYETTEVILLE STATE UNIVERSITY
1200 Murchison Road, Newbold Station
Fayetteville, NC 28301-4298
(919)486-1111

OFFICE OF THE
BOARD OF TRUSTEES

October 14, 1993

Dr. T.M. Viswanathan
2615-B Confederate Drive
Wilmington NC 28403

Dear Dr. Viswanathan:

On Tuesday, October 5, 1993, the Board of Trustees of Fayetteville State University considered and decided your appeal. The Board carefully reviewed the entire transcripts, documents, report of the University's Hearing and Reconsideration Committee, the Chancellor's letter of August 2, 1993, as well as your documents of appeal. The Board did not find that you provided any additional information that supported a reversal of the Chancellor's decision of non-reappointment to the faculty. The Board concluded to accept the Chancellor's decision and confirmed the Chancellor's authority to not reappoint you to a faculty position.

Should you desire to initiate review of this decision, you must submit a written notice of appeal to the Board of Governors within ten (10) days after receipt of this letter. The notice of appeal shall be addressed as follows:

Mr. Samuel H. Poole, Chairman
Board of Governors
c/o The University of North Carolina
910 Raleigh Road
P.O. Box 2688
Chapel Hill, NC 27515-2688

Sincerely,

(Sd.) Hector Mceachern, Chair
Board of Trustees
Fayetteville State University

cc Dr. Lloyd V. Hackley, Chancellor
FSU Board of Trustees

Fayetteville State University is a constituent institution of The University of North Carolina

APPENDIX B

SEAL of the University

THE UNIVERSITY OF NORTH CAROLINA

General Administration
POST OFFICE BOX 2688
CHAPEL HILL, NC 27515-2688

Appalachian State University
East Carolina University
Elizabeth City State University
Fayetteville State University
North Carolina Agricultural and
Technical State University
North Carolina Central University
North Carolina School of the Arts
North Carolina State University at
Raleigh
Pembroke State University
University of North Carolina at Asheville
University of North Carolina at
Chapel Hill

University of North Carolina at Charlotte
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Greensboro
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Wilmington
Western Carolina University
Winston-Salem State University

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ROSALIND FUSE-HALL
Secretary of the University
Telephone (919)962-4615
FAX: (919) 962-2751

September 9, 1994

Dr. T. M. Viswanathan
Post Office Box 295
Newell, North Carolina 28126

Dear Dr. Viswanathan:

The Chairman of the Board of Governors has asked me to convey to you the enclosed copy of the report received and approved by the Board at its meeting held on September 9, 1994. This constitutes final University disposition of the question you advanced to the Board.

Sincerely,
(Sd.)_____

Rosalind Fuse-Hall

Enclosure
cc: Chancellor L.V. Hackley

APPENDIX B

REPORT OF THE COMMITTEE ON UNIVERSITY GOVERNANCE IN THE APPEAL OF T.M. VISWANATHAN

We bring to you today the appeal of a faculty member at Fayetteville State University. This case began in February 1990, when Dr. T.M. Viswanathan sought review of a decision not to renew his tenure track contract as an Associate Professor in the Department of Mathematics and Computer Science. The FSU faculty Hearing and Reconsideration Committee disagreed with the nonrenewal decision. Chancellor Hackley, however, determined that the evidence did not support a finding of impermissible reasons

and that the nonrenewal decision should stand. His decision was sustained by the FSU Board of Trustees.

On appeal to the Board of Governors, the Chancellor's decision was reversed and the case was remanded to FSU. Because there was some evidence that Dr. Viswanathan could have been penalized for a speech he had made on campus, the matter was remanded to FSU. When this decision was made on September 16, 1991, the faculty roster had been set for the 1991-1992 academic year. Thus, as a remedy, the Board of Governors directed that Professor Viswanathan be given an opportunity to apply for a new position in the Department of Mathematics and Computer Science for the 1992-93 academic year.

Thereafter Dr. Viswanathan did submit an application for employment and this was referred to the department chair. Although the math faculty recommended that a position be offered, the chair determined that Dr. Viswanthan's credentials did not match the department's instructional needs. This recommendation not to offer an appointment

was forwarded to the Dean and the Vice Chancellor who both agreed with the chair's decision. Based upon these reviews, the Chancellor notified Dr. Viswanathan that a position would not be offered to him.

In a letter to President Spangler, Dr. Viswanathan questioned this outcome and asked whether the institutional decision complied with the Board's September 1991 order. The matter was then referred back to the Board which found in a decision dated June 12, 1992 that the review at FSU was consistent with the Board's earlier decision.

Professor Viswanathan then sought to appeal the decision not to offer him an appointment through the campus procedures for non-reappointment cases. When these avenues were not made available to him, he filed suit in New Hanover County Superior Court, contending that he had a right to a campus review. The court agreed that he had a right to review in accord with the FSU procedure and ordered that this process should begin. The institutional steps of

conference and a review before the Hearing and Reconsideration Committee began in March 1993.

In the administrative chain, the Dean and the Vice Chancellor met with Dr. Viswanathan and considered his contentions. Each of these officials, however, recommended that he not be appointed. Thereafter, Dr. Viswanathan sought review from the faculty Hearing and Reconsideration Committee. Although this committee found that there was evidence of impermissible reasons, the Chancellor did not accept this recommendation; he determined that the associate professor position would not be offered to Dr. Viswanathan. This decision was then sustained by the FSU Board of Trustees.

After an appeal was filed with the Board of Governors, the case was referred to the Committee on University Governance for its review and recommendation. A hearing was conducted on July 8, 1994, at which time presentations were made by Dr. Viswanathan and his attorney, and by Ms. Lessane on behalf of the Chancellor.

After a thorough review of the Record, the written contentions of the parties and oral presentations made during this appeal, the Committee has made the following findings: First, we recognized that because the remedy directed by the Board after the first appeal was an opportunity to make application for a position, this case might be considered a review of refusal to hire. The Board has held in several recent cases that there is no appellate jurisdiction for such a review, and on this precedent, we found that the decision of the FSU Board of Trustees should be sustained. Second, we also recognized that this case initially was considered as an appeal from a decision not to reappoint a faculty member to a tenure track position. Because of this posture, we have also undertaken a review as to whether Dr. Viswanathan carried his burden of proving that the institutional decision was based upon an impermissible reason. Considering all of the written submissions and oral presentations, we found that the burden of proof was not carried by Dr. Viswanathan in this case.

Thus, for all of the foregoing reasons, we recommend to you that the decision of the FSU Board of Trustees be sustained. Dr. Viswanathan has not shown he was improperly denied a position in the Department of Mathematics and computer Sciences at Fayetteville State University.

(Sd.) Mrs. Maxine H. O'Kelley, Chairman
Committee on University Governance

Sept. 9, 1994
(date)

Received and approved by
The Board of Governors
September 9, 1994

(Sd.) Rosalind Fuse-Hall, Secretary
The University of North Carolina

Sept. 9, 1994
(date)

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

Case No. 1:94CV528

Docket Entry: 55
Filed April 23, 1996

TENKASI. M. VISWANATHAN,)
)
Plaintiff,)
)
v.)
)
THE UNIVERSITY OF NORTH)
CAROLINA BOARD OF)
GOVERNORS et al.,)
)
Defendants.)
)

ORDER

WARD, Senior Judge

On March 1, 1996, this court granted Defendants' Motion to Dismiss and entered a judgment dismissing this action ("Dismissal Order"). Plaintiff filed a Combined Motion Under Rules 52(b) and 59(e) in which he moved for additional findings and amendment or alteration of the Dismissal Order on March 18, 1996. On April 1, 1996, Plaintiff gave Notice of Appeal of the Dismissal Order.

"The filing of a notice of appeal is an event of jurisdictional significance – it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982). The filing of a timely post-trial motion will toll the time for filing a notice of appeal and make any subsequent notice of appeal ineffectual. See id. at 60-61. Motions under Fed.R.Civ.P.52(b) and 59(e) must be filed within ten days of the date of judgment. Under the Fed.R.Civ.P. 6(a)'s provision for computation of time, the ten-day period for filing such motions in response to the Dismissal Order ran out on March 15, 1996. In his Combined Motion, Plaintiff asserts that he "is serving this motion in a timely manner on the 15th day of March, 1996, the tenth day after entry of the order." Even if this unsworn representation is accepted as true, the text of the Rules and their respective advisory Committee Notes make clear that such motions must be "filed", not "served," by the deadline; thus, Plaintiff's

Combined Motion is untimely and his Notice of Appeal was effectual. Because the Dismissal Order is the subject of both Plaintiff's Combined Motion and appeal, this Court has no jurisdiction to rule on the Combined Motion. Further, if the Combined Motion were treated as timely and jurisdiction was proper, it is determined that the Combined Motion should be denied because it presents no basis for altering or amending the Dismissal Order. For these reasons,

IT IS ORDERED that this Court lacks jurisdiction to rule on Plaintiff's Combined Motion Under Rules 52(b) and 59(e).

This the 24th day of April, 1996.

(Sd.) Hiram Ward
UNITED STATES DISTRICT JUDGE

APPENDIX D

TENURE POLICIES AND REGULATIONS OF FAYETTEVILLE STATE UNIVERSITY

SECTION 1. FREEDOM AND RESPONSIBILITY IN THE UNIVERSITY COMMUNITY

Fayetteville State University is dedicated to the transmission and advancement of knowledge and understanding. Academic freedom is essential to the achievement of these purposes. This institution, therefore, supports and encourages freedom of inquiry for faculty members and students, to the end that they may responsibly pursue these goals through teaching, learning, research, discussion, and publication, free from internal or external restraints that would unreasonably restrict their academic endeavors.

Fayetteville State University shall protect faculty and students in their responsible exercise of the freedom to teach, to learn, and otherwise to seek and speak the truth.

Faculty and students of this institution shall share in the responsibility for maintaining an environment in which academic freedom flourishes and in which the rights of each member of the academic community are respected.

APPENDIX D

TENURE POLICIES AND REGULATIONS OF FAYETTEVILLE STATE UNIVERSITY

SECTION 2. ACADEMIC FREEDOM AND RESPONSIBILITY OF FACULTY

It is the policy of Fayetteville State University to support and encourage full freedom, within the law, of inquiry, discourse, teaching, research, and publication for all members of the academic staffs of this institution. Members of the faculty are expected to recognize that accuracy, forthrightness, and dignity befit their association with this institution and their position as men and women of learning. They should not represent themselves, without authorization, as spokesmen for Fayetteville State University.

Fayetteville State University will not penalize or discipline members of the faculty because of the exercise of academic freedom in the lawful pursuit of their respective area of scholarly and professional interest and responsibility.

APPENDIX D

TENURE POLICIES AND REGULATIONS OF FAYETTEVILLE STATE UNIVERSITY

SECTION 3. ACADEMIC TENURE

Subsection A. GENERAL

Academic tenure refers to the conditions and guarantees that apply to a faculty member's employment. More specifically, it refers to the protection of a faculty member against involuntary suspension or discharge from employment or reduction in rank by Fayetteville State University except upon specified grounds and in accordance with the procedures provided in Section 4 and against termination of employment except as provided for in Section 6.

Academic tenure for faculty members is intended to secure their academic freedom and to help the institution attract and retain faculty members of high quality. While academic tenure may be withheld on any grounds except those specifically stated to be impermissible under Section 5.A., a recommendation of permanent tenure requires that the

faculty member's demonstrated professional competencies, his potential for future contributions, and institutional needs and resources be assessed.

Subsection B.

IN RELATION TO FACULTY RANKS

Academic tenure, as herein described, pertains exclusively to the employment of faculty members by appointment to specific faculty ranks. Such appointments may be for fixed terms of employment, automatically terminable when they expire (fixed term appointment); or they may be for probationary terms (probationary term appointment); or they may be continuous until retirement, death, or resignation (appointment with permanent tenure).

The faculty ranks to which appointments may be made and the incidents of academic tenure applicable to each are:

(1) **Instructor.** . . .

(2) **Assistant Professor.** . . .

(3)

Associate Professor. When a faculty member's initial appointment by the institution is to the rank of associate professor, the appointment shall be to a probationary term of one year. Unless at any point the associate professor is not reap-pointed, he shall be reappointed to a second one-year term and then to a three-year term before a decision is made whether to recommend permanent tenure at the same or higher rank or to offer a terminal appointment of one academic year. At least 90 days before the end of his first one-year appointment, the associate professor shall be given written notice whether, when his current term expires, he will be reappointed at the rank of associate professor for another one-year term or not reappointed. At least 180 days before the end of his second consecutive one-year appointment, he shall be given written notice whether, when his current term expires, he will be reappointed at the

rank of associate professor for a three-year term or not reappointed.

Before the end of the second year of his three-year term, he shall be given written notice whether he will be recommended for permanent tenure at the same or higher rank when his current term expires or not reappointed.

Failure to give the required notice of a decision not to reappoint at any point herein required has the same effect as a decision at that time to offer a terminal appointment at the same rank for one academic year. The decision herein required shall be made as provided in Section 3.C.

A promotion at any time from the rank of associate professor to that of professor confers permanent tenure from the effective date of the promotion. Since this promotion confers tenure, it must be finally approved by the president and the

Board of Governors of the University of North Carolina.

(4) **Professor.**

(5) **Special Faculty Appointments.**

Subsection C.

GENERAL PROVISIONS

(1)

Initiation, Review, and Approval of Appointments, Pro-motions, and Reappointments. Each initial appointment with a fixed or probationary term, **each** promotion in rank, each reappointment to a fixed term, and each reappointment of an instructor, assistant professor, associate professor, or professor, whether or not the reappointment recommends the conferral of permanent tenure shall be initiated by recommendation of the chairman of the department[1]

---

[1] "Department" is used herein as a generic term for departments and any other academic units to which faculty appointments are made. "Chairman" as a generic term for department chairman and any other heads of academic units to which faculty appointments are made.

concerned. In making a recommendation, the chairman shall consult with the department's assembled tenured faculty members. If the department has too few tenured faculty members to give a representative view of departmental opinion, the chairman shall consult with the senior members of the department who are familiar with the work of the candidate being considered.

The chairman's recommendation shall be sent to the division chairman, who shall forward it with his recommendation to the provost/ vice chancellor for academic affairs. The provost/vice chancellor will attach his recommendation and then forward all recommend-recommendations to the chancellor. The chancellor, in arriving at this decision, shall consult with the Committee on Tenure, Promotion, Appointments, and Reappointment.[2]

---

[2] See the current constitution of the Fayetteville State University Senate for the composition of this committee.

If the chancellor decides not to recommend reappointment, promotion, or permanent tenure, he shall give the faculty member being considered a simple, unelaborated, written statement of the decision. This decision is final except as it may later be reviewed in accordance with the provisions of Section 5. If the chancellor concurs in a recommendation that will confer permanent tenure, he shall consult with the Board of Trustees and, unless dissuaded, forward, the recommendation to the president and Board of Governors for approval. All other favorable recommendations by the chancellor in regard to appointments, reappointments, and promotions shall be forwarded by him to the Board of Trustees for final approval unless the board delegates the authority to give final approval.

(2)

Decision Not to Reappoint Upon Expiration of Probationary Terms. The decision not to

reappoint when a probationary term appointment as instructor, assistant professor, associate professor, or professor expires shall be made by the chairman of the department concerned after consulting with the depart-ment's assembled tenured faculty. If the department has too few tenured faculty members to give a representative view of departmental opinion, the chairman shall consult with senior members of the department who are familiar with the work of the candidate for reappointment. The chairman's decision is final except as it may be later reviewed in accordance with the provisions of Section 5. The chairman shall notify the faculty member of his decision by a simple, unelaborated statement that the faculty member will not be reappointed. Each decision not to reappoint shall be communicated for information through the administrative channels pre-scribed for review had the decision been to reappoint.

(3) Early Promotion and Tenure.

(4) Visiting Faculty Members.

(5)

Terms and Conditions of Appointments.

The terms and conditions of each appointment and each reappointment to the faculty shall be set out in writing. A copy of the terms, signed by the chancellor, shall be delivered to the faculty member, and the chancellor shall retain a copy. The general terms and conditions of such appointments, including those provided herein, shall be either set out in the document of appointment or incorporated therein by clear reference to specified documents that shall be readily available to the faculty member.

Any special terms and conditions shall be clearly stated in the written appointment. Except as herein provided, no special terms or conditions may be included that vary with the general terms and conditions stated herein. The responsibility for initiating the inclusion of special terms and conditions

in documents of appointments shall be with the chairman who recommends the appointment.

APPENDIX D

TENURE POLICIES AND REGULATIONS OF FAYETTEVILLE STATE UNIVERSITY

SECTION 5.

NONREAPPOINTMENT OF FACULTY MEMBERS ON PROBATIONARY APPOINTMENTS

Subsection A.

PERMISSIBLE AND IMPERMISSIBLE GROUNDS FOR NONREAPPOINTMENT

The decision whether to reappoint a faculty member when a probationary term appointment expires may be based on any factor considered relevant to the total institutional interests, but it must consider the faculty member's demonstrated professional competence, his potential for future contributions, and institutional needs and resources. These considerations may form, in whole or in part, the basis of the ultimate decision, except that a decision not to

reappoint may not be based upon (1) the faculty member's exercise of rights guaranteed by either the First Amendment to the United States Constitution or Article I of the North Carolina Constitution; (2) discrimination based upon the faculty member's race, sex, religion, or national origin; or (3) personal malice.

Subsection B.

CONFERENCE WITH DEPARTMENT CHAIRMAN

Within five days after receiving a written notice of nonreappointment, a faculty member may in writing request a private conference with his department chairman[6] to discuss the reasons for nonreappointment. This request shall be granted and the conference held forthwith, within five days after receipt of the request if possible.

---

[6] If the initial decision not to reappoint is made by an administrative officer other than the chancellor, substitute the name of that administrative officer for department chairman whereever the latter phrase appears. If the initial decision not to reappoint is made by the chancellor or Board of Trustees, the faculty member who is not to be reappointed may seek review of that decision in accordance with the procedure set out in Section 501©(4) of The Code.

Within five days after the conference, the department chairman shall give the faculty member a simple, unelaborated, written statement of whether the original decision remains in effect.

Subsection C.

CONFERENCE WITH SUPERVISOR OF DEPARTMENT CHAIRMAN

Within five days after receiving notice that the original decision remains in effect, the faculty member may in writing request a conference with the department chairman's immediate administrative supervisor. This request shall be granted and the conference held forthwith, within five days after receipt of the request if possible.

Within ten days after this conference, the reviewing administrative officer shall send a written evaluation of the matter to the faculty member and to the department chairman. The evaluation may be in the form of an unelaborated concurrence with the decision; an expression of disagreement with the decision, with or without supporting reasons; or a recommendation for reconsidering the decision,

with or without suggestions for specific procedures for the reconsideration. Whatever form the evaluation may take, it is merely recommendatory and is not binding upon the department chairman or final as to the faculty member.

Within five days after receipt of an evaluation that disagrees with the decision or recommends its reconsideration, the department chairman shall give the faculty member and his immediate supervisor his response in writing.

Subsection D.

REQUEST FOR AND SCOPE OF REVIEW BY HEARING AND RECONSIDERATION COMMITTEE

Within five days after he receives notice of an unfavorable action resulting from the conference with the department chairman's supervisor, the faculty member may request that the Hearing and Reconsideration Committee review the decision. This review is limited solely to determining whether the decision not to reappoint was based upon any of the grounds stated to be impermissible in Subsection A of this section.

The request for review shall be written and addressed to the chairman of the committee. It shall specify the grounds upon which the faculty member contends that the decision was impermissibly based, with a short, plain statement of facts that the faculty member believes supports the contention.

Such a request constitutes on the faculty member's part: (1) a representation that he can prove his contention, and (2) an agreement that the institution may offer in rebuttal of his contention any relevant data within its possession.

The Hearing and Reconsideration Committee shall consider the request and grant a hearing if it determines that (a) the request contains a contention that the decision was impermissibly based under this section, and (b) the facts suggested, if established, will support the contention. A denial of the request finally confirms the decision. If the request is granted, a hearing shall be held within ten days after the request is received; the faculty member shall be given at least five days' notice of the hearing.

Subsection E.

CONDUCT OF HEARING

The hearing shall be conducted informally and in private. Only the members of the hearing committee, the faculty member, the department chairman, and such witnesses as may be called may attend, except that the faculty member and the department chairman may each be accompanied by a person of his choosing. A quorum for the hearing is a simple majority of the total committee membership. Committee members who hold an appointment in the faculty member's department, who will testify as witnesses, or who have any other conflict of interest are disqualified from participating in that hearing. If the faculty member requests it and the chairman of the committee approves, a transcript of the proceedings shall be made and provided to the faculty member. The committee may consider only such evidence as is presented at the hearing and need consider only the evidence offered that it considers fair and reliable. All witnesses may be questioned by the

committee members, the faculty member, the department chairman, and the representatives of the faculty members and chairman. Except as herein provided, the conduct of the hearing is under the committee chairman's control.

Subsection F.

HEARING PROCEDURE

The hearing shall begin with the faculty member's presentation of contentions, which shall be limited to those grounds specified in the request for a hearing and supported by such proof as he desires to offer. When the faculty member has concluded this presentation, the committee shall recess to consider whether he has established a prima facie case. If it determines that the contention has not been so established, it shall notify the parties to the hearing and thereupon terminate the proceedings. Such termination confirms the decision not to reappoint. If it determines that rebuttal or explanation is desirable, it shall notify the parties and the hearing shall proceed. The department chairman may then present rebuttal of the faculty member's contentions, or

in general support of the decision not to renew, such testimonial or documentary proofs as he desires to offer, including his own testimony.

At the end of this presentation, the Hearing and Reconsideration Committee shall consider the matter in executive session. The burden is upon the aggrieved faculty member to satisfy the committee that his contention is true.

Subsection G.

PROCEDURE AFTER HEARING

If the Hearing and Reconsideration Committee determines that the faculty member's contention has not been established, it shall, by a simple unelaborated statement, so notify him, the department chairman, and the department chairman's immediate supervisor. Such a determination confirms the decision not to reappoint. If the Hearing and Reconsideration Committee determines that the faculty member's contention has been satisfactorily established, it shall so notify him, the department chairman, and the department chairman's immediate supervisor by a written

notice that shall also include a recommendation for corrective action by the department chairman.

Within five days after receiving such a recommendation, the department chairman shall notify the faculty member, his own immediate supervisor, and the chairman of the Hearing and Reconsideration Committee what modifications, if any, he will make with respect to the original decision not to reappoint.

If the department chairman fails to make a recommended modification in the original decision, the Hearing and Reconsideration Committee shall submit a report to the Chancellor containing the committee's findings and recommendation and what it considers to be appropriate action by the chancellor to resolve the matter.

APPENDIX E

THE CODE

BOARD OF GOVERNORS

THE UNIVERSITY OF NORTH CAROLINA

SECTION 501 C.

Relation of the President to the University

Subsection (4) Subject to such regulations and limitations as may be prescribed by the Board of Governors, the faculties, staffs and student bodies of the constituent institutions, or any member thereof, may have the right to appeal the disposition of grievances to the Chancellor, and from the Chancellor to the President, and from the President to the Board of Governors; provided, that appeals based on policies, rules or regulations adopted by the Board of Trustees shall be addressed initially to the Chancellor, and from the Chancellor to the Board of Trustees, and, where allowed, from the Board of Trustees to the Board of Governors; however, all appeals addressed to or request for hearings by the Board of Governors, from whatever source, shall be transmitted through the President.

APPENDIX E

THE CODE

BOARD OF GOVERNORS

THE UNIVERSITY OF NORTH CAROLINA

SECTION 502

CHANCELLORS OF CONSTITUENT INSTITUTIONS

Subsection 502 C.(4)

The Chancellor shall be the official medium of communication between the Board of Trustees and all individuals, officials, agencies and organizations, both within and without the institution.

APPENDIX E

THE CODE

BOARD OF GOVERNORS

THE UNIVERSITY OF NORTH CAROLINA

CHAPTER VI

ACADEMIC FREEDOM AND TENURE

SECTION 600

FREEDOM AND RESPONSIBILITY IN THE UNIVERSITY COMMUNITY

(1) The University of North Carolina is dedicated to the transmission and advancement of knowledge and understanding. Academic freedom is essential to the achievement of these purposes. The University, therefore, supports and encourages freedom of inquiry for faculty members and students, to the end that they may responsibly pursue these goals through teaching, learning, research, discussion, and publication, free from internal or external restraints that would unreasonably restrict their academic endeavors.

(2) The University and each constituent institution shall protect faculty and students in their responsible exercise of the freedom to teach, to learn, and otherwise to seek and speak the truth.

Faculty and students of The University of North Carolina shall share in the responsibility for maintaining an environment in which academic freedom flourishes and in

which the rights of each member of the academic community are respected.

APPENDIX E

THE CODE

BOARD OF GOVERNORS

THE UNIVERSITY OF NORTH CAROLINA

CHAPTER VI

ACADEMIC FREEDOM AND TENURE

SECTION 601

ACADEMIC FREEDOM AND RESPONSIBILITY OF FACULTY

(1) It is the policy of The University of North Carolina to support and encourage full freedom, within the law, of inquiry, discourse, teaching, research, and publication for all members of the academic staffs of the constituent institutions. Members of the faculty are expected to recognize that accuracy, forthrightness, and dignity befit

their association with this institution and their position as men and women of learning. They should not represent themselves, without authorization, as spokesmen for The University of North Carolina or any of its constituent institutions.

(2) The University and its constituent institutions shall not penalize or discipline members of the faculty because of the exercise of academic freedom in the lawful pursuit of their respective area of scholarly and professional interest and responsibility.

APPENDIX E

THE CODE

BOARD OF GOVERNORS

THE UNIVERSITY OF NORTH CAROLINA

CHAPTER VI

ACADEMIC FREEDOM AND TENURE

SECTION 602

ACADEMIC TENURE

(1) To promote and protect the academic freedom of its faculty, the Board of Trustees of each constituent institution shall adopt policies and regulations governing academic tenure.

(2) ...

(3) The tenure policies and regulations of each constituent institution shall prescribe the procedures by which decisions concerning appointment, reappointment, promotion and the conferral of permanent tenure shall be made. The lengths of terms of appointment that do not carry permanent tenure and those faculty ranks or titles whose holders shall be eligible for permanent tenure shall be prescribed. The institutional policies and regulations also shall prescribe the intervals at which the review of candidates for reappointment and promotion, including the conferral of permanent tenure, shall occur.

The tenure policies and regulations of each institution, which shall include the complete text of Chapter

Six of the Code, shall be published by the institution and distributed to its faculty members.

(4) ...

(5) ...

(6) Institutional tenure policies and regulations shall distinguish among the following:

(a) the nonreappointment (or nonrenewal) of a faculty member at the expiration of a specific term of service;

APPENDIX E

THE CODE

BOARD OF GOVERNORS

THE UNIVERSITY OF NORTH CAROLINA

CHAPTER VI

ACADEMIC FREEDOM AND TENURE

SECTION 604

APPOINTMENT, NONREAPPOINTMENT AND REQUIREMENTS OF NOTICE AND REVIEW

SECTION 604 A.
Notice of Reappointment or Nonreappointment

(1) The decision not to reappoint a faculty member at the expiration of a fixed term of service shall be made by the appropriate institutional faculty and administrative officers early enough to permit timely notice to be given. For full-time faculty at the rank of instructor, assistant professor, associate professor or professor, the minimum requirement for timely notice shall be as follows:

(a) during the first year of service at the institution. The faculty member shall be given not less than 90 calendar days' notice before his employment contract expires;

(b) during the second year of continuous service at the institution, the faculty member shall be given not less than 180 calendar days' notice before his employment contract expires;

(c) after two or more years of continuous service at th institution, the faculty member shall be given

not less than twelve months' notice before his employment contract expires.

(2) Notice of reappointment or nonreappointment shall be written. If the decision is not to reappoint, then failure o give timely notice of nonreappointment will oblige the Chancellor thereafter to offer a terminal appointment of one academic year.

APPENDIX E

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BOARD OF GOVERNORS

THE UNIVERSITY OF NORTH CAROLINA

SECTION 604 B.

Impermissible Reasons for Nonreappointment

In no event shall a decision not to reappoint a faculty member be based upon (a) the exercise by the faculty member of rights guaranteed by the First Amendment to the United States Constitution, or by Article I of the North

Carolina Constitution, or (b) discrimination based upon the faculty member's race, sex, religion, or national origin; or (c) personal malice.

APPENDIX E

THE CODE

BOARD OF GOVERNORS

THE UNIVERSITY OF NORTH CAROLINA

APPENDIX [TO THE CODE]

DELEGATIONS OF DUTY AND AUTHORITY TO BOARDS OF TRUSTEES

[As adopted by the Board of Governors, 7/7/72, and amended through 8/1/88]

Pursuant to authority vested in it by the General Statutes, and consistent with the provisions of the Code of The University of North Carolina, the Board of Governors hereby delegates to the Boards of Trustees of the constituent institutions of The University of North Carolina the following duties and powers:

I. ACADEMIC AND ADMINISTRATIVE PERSONNEL

A. Appointment and Compensation

1. With respect to all faculty positions with permanent tenure and all senior administrative positions, namely vice chancellors, provosts, deans, and directors of major educational and public service activities, the Chancellor, following consultation with the Board of trustees, shall forward to the President recommendations with respect to such appointments, promotions and compensation; if the president concurs in such recommendations, he shall forward them to the Board of governors for approval.

2. With respect to all faculty and administrative positions, other than those identified in subparagraph 1 above, and other than those subject to the State Personnel act, the Chancellor shall forward his recommendations for appointment, promotion and compensation to the Board of Trustees; subject to applicable provisions of the University Code and to such policies as may be established by the Board of Governors, the action of

the Board of Trustees with respect to such personnel action shall be final.

APPENDIX F

CIVIL RIGHT STATUTES

42 U.S.C. SECTION 1981

EQUAL RIGHTS UNDER THE LAW

(a) **Statement of equal rights**

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefits of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) **"Make and enforce contracts" defined**

For purposes of this section, the term "make and enforce contracts" includes the making, performance,

modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

© **Protection against impairment**

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

(As amended Pub. L.102-166, title I. Section 101, November 21, 1991, 105 Stat.1071.)

Amendments 1991 – Pub. L.102-166 designated existing provisions as subsec. (a) and added subsecs. (b) and ©.

APPENDIX F

42 U.S.C. SECTION 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, or the District of Columbia subjects, or causes to be subjected, any citizen of the United States or other person

within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purpose of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

APPENDIX F

42 U.S.C. SECTION 1985

CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS

Subsection (3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering

the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.